IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 8067 of 2006

Namdeo Arjun Sutar ..Petitioner

vs.

1. State of Maharashtra
and others ..Respondents

Mr.Rahul Kadam i/b Mr.Uday Warunjikar for petitioner.
Mr.A.G.Toraskar for respondent nos.3.

CORAM: S.C.DHARMADHIKARI J.
30th **NOVEMBER, 2007**

P.C.

1. Lower Appellate Court has dismissed the petitioner's appeal challenging the decree of the Trial Court dated 17th June, 2005 dismissing the suit.

2. The petitioner was to prepare the appeal paper book and file it within a particular time limit. Reliance is placed by Shri Toraskar upon the order below Exh.12 and another order dated 15th April, 2006 based upon which the lower Appellate Court has proceeded to dismiss the appeal. In the submission of Shri Toraskar enough opportunity was given to pay the paper book charges but having not availed of that opportunity now the petitioner cannot complain

that any injustice is caused to him.

3. Having perused the petition and annexures thereto including the impugned order, I am of the view, that mere procedural delay ought not to have deprived the petitioner/appellant from agitating his plea that the judgment and decree of the Trial Court is erroneous. Ultimately, this is an appeal under sec.96 of the Code of Civil Procedure. In such circumstances, valuable rights could have been protected by putting the petitioner on terms.

4. The impugned order is, therefore, quashed and set aside and it is directed that if the paper book is filed, if not already prepared and filed, within a period of 10 days from the date of receipt of ordinary copy of this order duly authenticated as per rules, the Appellate Court to allow the appeal to be numbered and thereafter proceed with it on merits and in accordance with law. If the paper book charges are not deposited within the period or the paper book is not tendered the impugned order stands and thereupon the writ petition would also stand dismissed. As per this order if the petitioner submits the

appeal paper book within time, the petitioner to pay to respondent no.3 costs quantified at Rs.1000/- within a period of 10 days from today.

(S.C.DHARMADHIKARI J.)